

## REQUEST FOR COMMISSION ACTION

OG-08-04-314

Meeting: May 6, 2008 @ 9:30 a.m.  
Request: To act on the **Morado Mountain Estates Variance Request**

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### I. Action Requested

This is a request from Morado Mountain Estates, LLC, represented by Terry Forest of DJ&A, to approve the Morado Mountain Estates Subdivision and Variance Request. Due to an amended subdivision application submitted on April 22, 2008, the subdivision cannot be acted on until the requirements of Section 3-2-9 of the Ravalli County Subdivision Regulations have been met. The amendments do not affect the variance request so the Commissioners may act on the variance.

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### II. Subdivision Proposal

#### A. Basic Facts

1. The Morado Mountain Estates Subdivision is a 58-lot subdivision on 165.00 acres located approximately 6.00 miles east of Florence. There are two phases proposed.
2. The applicant is requesting one variance from improving the portion of Eight Mile Creek Road leading to the subdivision to meet the county road standards for new construction. The applicant is instead proposing to pay the cost of materials to improve the road to meet the standards for existing construction. The Road Department has agreed to provide the labor.

#### B. Road Design Issue

1. The applicant originally proposed one access to the subdivision via Granite Creek Road and Eight Mile Creek Road from Eastside Highway.
2. Both Planning Staff and the Planning Board expressed concerns about the impacts of the internal road design on local services and public health and safety, specifically the combination of one access, a loop road exceeding 2.00 miles in length, and 58 lots.
3. No written comments regarding the road design were submitted from emergency services.
4. Staff understands that the applicant is now proposing, as of April 22, 2008, the following modifications to the proposal:
  - a) Phase 1 will consist of Lots 1 through 11 and 51 through 58.
  - b) As part of Phase 1, the applicant will provide the cost of materials to improve Eight Mile Creek Road; construct Morado Mountain Drive from Granite Creek Road to the intersection with Kaylie Drive; construct Kaylie Drive from Morado Mountain Drive to the western boundary of Lot 52; and construct Riley Lane from Kaylie Drive through Lupine Meadows (proposed subdivision adjacent to the west) to the existing cul-de-sac that serves Gunshy Ridge.
  - c) Phase 2 will now consist of Lots 12 through 50.

- d) As part of Phase 2, the applicant will improve the portion of Granite Creek Road leading to the subdivision; construct Morado Mountain Drive from the intersection with Kaylie Drive to the middle of Lot 50; construct Lyneah Court; and either ensure that Haley Court from Morado Mountain Drive to Riley Lane meets county standards (the applicant of Lupine Meadows would make the improvements) or construct Harper Drive (the switchback road connecting Kaylie Drive to Morado Mountain Drive).
  - e) If the applicant is able to connect to Haley Court, then Lot 40 will be served by a private driveway constructed by the applicant to meet the Fire District's standards for a driveway exceeding 150 feet in length.
  - f) The applicant will construct several turnarounds as part of Phase 2.
- C. Section 3-2-9 of the Ravalli County Subdivision Regulations
- 1. The applicant submitted an amended application to the Planning Department on April 22, 2008.
  - 2. By April 29<sup>th</sup> (within 5 working days), the Planning Department must determine whether or not the modifications are material. The 60 working-day public review period is suspended during this time. Since the amendments only affect the subdivision and not the variance, the review time for the variance is not suspended.
  - 3. If the changes are not material, the review period continues. The public hearing will either be continued from May 6<sup>th</sup> or rescheduled.
  - 4. If the changes are material, a new subdivision application is required.
- D. Additional Information Required for the Redesign (Section 3-1-5 of the Subdivision Regulations)
- 1. Granite Creek Road - The applicant should provide rationale for not improving this road until Phase 2.
  - 2. Riley Lane
    - a) The applicant will need to provide evidence there is legal access because it is a private road.
    - b) The applicant will need to submit road plans (road plans have been drafted through the Lupine Meadows Subdivision, but are not complete) and receive preliminary approval from the Road Department.
    - c) The applicant will need to provide evidence they can join an existing road maintenance agreement or create a new agreement.
  - 3. Haley Court
    - a) The applicant will need to provide evidence there is legal access because it is a private road.
    - b) The applicant will need to submit road plans (road plans have been drafted through the Lupine Meadows Subdivision, but are not complete) and receive preliminary approval from the Road Department.
    - c) The applicant will need to provide evidence they can join an existing road maintenance agreement or create a new agreement.
  - 4. Jenne Lane
    - a) The applicant will need to provide evidence there is legal access because it is a private road.
    - b) The applicant will need to provide evidence that this existing road meets county standards for the additional traffic Morado Mountain Estates will add or plans to improve the road, and approval from the Road Department.
    - c) The applicant will need to provide evidence they can join an existing road maintenance agreement or create a new agreement.
  - 5. Updated preliminary plat

6. Updated phasing plan
7. An analysis of how the new road design will mitigate the impacts on local services and public health and safety identified by the Planning Department and Planning Board.

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### III. Planning Staff Recommendation

Planning Staff recommends conditional approval of the variance, but cannot complete the staff report at this time due to the amended application. (See attached Staff Report.)

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### IV. Planning Board Recommendation

The Ravalli County Planning Board held a public meeting on the proposal on April 16, 2008 and the following motions were approved:

The Board made a motion that the variance request be **denied**, based on the findings that it is not clear where the money for the county to provide labor is coming from and because the proposed travel surface width (22 foot east / west and 24 foot north/south) is not sufficient. **The Board voted 6-4 to approve this motion.**


The Board made a motion that the Morado Mountain Estate Major Subdivision be **denied**, based on the findings of fact and conclusions of law in the staff report. The Planning Board recommended that the following findings be added:

1. There is a lack of road connectivity.
2. The emergency access does not mitigate impacts of the road design on local services and public health and safety.
3. The internal roads are too steep.
4. Eight Mile Creek Road is too narrow.
5. Services cannot adequately provide for the existing density.
6. There are no impact fees in place to offset the costs of the proposal.
7. There are cumulative impacts.
8. The trail proposal is not adequate. The trails should be constructed.
9. The potential for fires to affect public health and safety has not been mitigated.

**The Board voted 5-4 to approve this motion.**

*Planning Board Meeting Minutes will be placed in BCC mail boxes as soon as they are available.*

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|--------------|---|
| Attachments: | Staff Report for the Variance<br>Exhibits for the Variance and Subdivision<br>Planning Board Meeting Minutes – will be placed in BCC mail boxes as soon as they are available<br>Application package – BCC already received these<br>Additional application items |
| Staff:       | Renee Lemon    |
| Date:        | April 23, 2008  |

**MORADO MOUNTAIN ESTATES  
58-LOT MAJOR SUBDIVISION AND ONE VARIANCE REQUEST**

**STAFF REPORT FOR THE BOARD OF COUNTY COMMISSIONERS**

**CASE PLANNER:**

Renee Lemon *RJ*

**REVIEWED/**

**APPROVED BY:**

Karen Hughes

**PUBLIC MEETINGS:**

Planning Board Public Meeting:

April 16, 2008

BCC Public Hearing:

9:30 a.m. May 6, 2008

Deadline for BCC action (60 working days):

May 23, 2008

**SUBDIVIDER:**

Morado Mountain Estates, LLC  
705 Spanish Peaks Drive  
Missoula, MT 59803

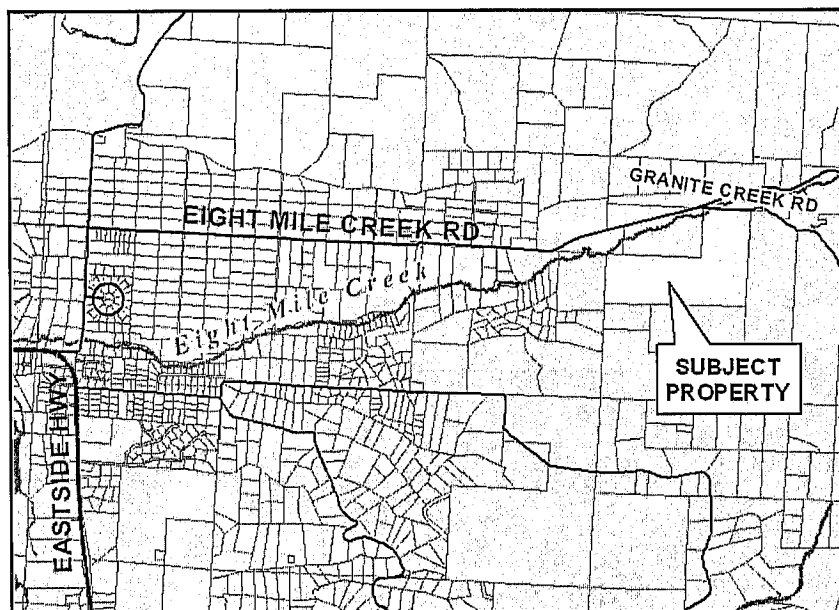
**TITLEHOLDER:**

Marion McHatton  
PO Box 746  
Lolo, MT 59847

**REPRESENTATIVE:**

Terry L. Forest, P.E.  
DJ&A  
3203 Russell Street  
Missoula, MT 59801

**LOCATION OF REQUEST:** The property is located east of Florence off Granite Creek Road.  
(See Map 1)



**Map 1: Location Map**  
(Source Data: Ravalli County GIS Department)

## LEGAL DESCRIPTION

### OF PROPERTY:

The S2NW4 and the W2NE4 of Section 10, T10N, R19W, P.M.M., Ravalli County, Montana.

## APPLICATION

### INFORMATION:

The subdivision application was determined sufficient on February 29, 2008. Agencies were notified of the subdivision on April 16, 2007 and March 3, 2008. Comments received from agencies are Exhibits A-1 through A-31 of the staff report. **This subdivision is being reviewed under the Ravalli County Subdivision Regulations (RCSR) amended May 24, 2007.**

### LEGAL NOTIFICATION:

A legal advertisement was published in the *Ravalli Republic* on Tuesday, April 1, 2008. Notice of the project was posted on the property and adjacent property owners were notified by certified mail dated March 12, 2008. One public comment was submitted. (Exhibit B-1)

## DEVELOPMENT

### PATTERN:

|                   |                         |
|-------------------|-------------------------|
| Subject property: | Agricultural/Open Space |
| North:            | Agricultural/Open Space |
| South:            | Agricultural/Open Space |
| East:             | Agricultural/Open Space |
| West:             | Agricultural/Open Space |

## INTRODUCTION

Morado Mountain Estates is a proposed 58-lot major subdivision located approximately 6.0 miles east of the community of Florence. Based on concerns from the Planning Department and Planning Board about the impacts of the internal road design on local services and public health and safety, the applicant has redesigned the subdivision. The redesign includes a second access via Riley Lane, potentially Haley Court, Jenne Lane, and Eight Mile Creek Road. Section 3-2-9 of the Ravalli County Subdivision Regulations outlines the process for amending an application after the application has been deemed sufficient but prior to the public hearing. The Planning Department has five working days to determine how the process will proceed with the amendments. During this time the sixty working day period is suspended. The applicant requested that the May 6<sup>th</sup> public hearing before the BCC remain. Due to the requirements of Section 3-2-9, planning staff cannot complete the staff report for the subdivision at this time. Planning staff recommends that the BCC review the variance request at the public hearing on May 6, 2008. At that time, the Planning Department will offer guidance on how to proceed with the subdivision review.

The subdivider is requesting a variance from Sections 5-4-5(a) and (b)(4) of the RCSR, to allow the subdivider to pay for the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet the road standards for existing construction within a 50-foot wide easement instead of reconstructing the road to meet the road standards for new construction. County road standards reflect the standards of the American Association of State Highway and Transportation Officials (AASHTO). AASHTO standards for existing construction differ from AASHTO standards for new construction.

## **PLANNING STAFF RECOMMENDED MOTIONS**

1. That the variance request from Sections 5-4-5(a) and (b)(4) of the Ravalli County Subdivision Regulations be **approved**, based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report.
2. Due to an amended application submitted by the applicant, the review of the subdivision has been suspended. The Planning Department will provide more information after reviewing the amended application. (Section 3-2-9, Ravalli County Subdivision Regulations)

## **PLANNING STAFF RECOMMENDED CONDITIONS FOR THE VARIANCE**

1. The applicant shall meet the following requirements prior to final plat approval (*Variance*):
  - a) The applicant shall pay the cost of materials required to improve the portion of Eight Mile Creek Road from Station 5+50 to meet the county road standards for existing construction. The applicant shall submit a receipt from the Ravalli County Treasurer's Office 30 calendar days after both the Morado Mountain Estates and Sandhill Ridge subdivisions have been granted preliminary approval showing that half of the payment has been paid. The applicant shall submit a receipt from the Treasurer's Office showing that the remaining amount has been paid 45 calendar days after the first amount was paid;
  - b) The current 50-foot wide easement will be acceptable for the improvements;
  - c) Improvements to the north/south major collector segment of Eight Mile Creek Road will be at a road width of 24 feet for a distance of 3,150 feet, and the improvements to the east/west minor collector segment will be at a road width of 22 feet for a distance of 17,375 feet;
  - d) Applicants will pay for a 0.12-inch leveling course and an 0.17-inch wearing course. The mutually agreed upon calculations for the leveling course and wearing course over the areas noted in item (c) are:
    - i. 1,520 cubic yards crushed aggregate for the shoulders at \$11.00 per cubic yard equaling \$16,720.
    - ii. 4,680 tons plant-mix asphalt at \$45.00 per ton equaling \$210,600.
    - iii. 7,625 tons plant-mix asphalt at \$45.00 per ton equaling \$343,125;
  - e) Additional improvements will require that applicants pay for 1 (10x3x48) Concrete Box Culvert at \$420 per foot + \$2,700 in delivery costs for a total of \$22,860;
  - f) The total costs under (d) and (e) is \$593,305, but the applicants acknowledge this total is subject to change depending on the unit cost of plant-mix asphalt. The parties also acknowledge that these calculations were generated by David Ohnstad at the Ravalli County Road and Bridge Department; and,
  - g) The applicant's expenditures for Eight Mile Creek Road improvements will be offset by any pro rata payments made in the same grader district from the time either subdivision is preliminarily approved until the time of Eight Mile Creek Road reconstruction. (*Section 3-2-8(a), RCSR, Prerequisites to Approval and Variance*)
2. The applicant shall provide for a 50-foot wide public trail easement through the common areas, as proposed in Exhibit C. (*Variance*)

## VARIANCE REQUEST

The subdivider is requesting a variance from Sections 5-4-5(a) and (b)(4) of the RCSR, to allow the subdivider to pay for the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet the county road standards (or AASHTO standards) for existing construction within a 50-foot wide easement instead of reconstructing the road to meet the county standards for new construction.

### Variance Analysis

Section 7-3-5(a), RCSR, outlines two sets of criteria to be used in analyzing a variance request.

#### Prerequisite Variance Criteria

In order for a variance to be considered for approval, the BCC must first determine that the variance request meets these stipulations:

1. Strict compliance with these regulations will result in undue hardship.
2. Compliance is not essential to the public welfare.

#### Variance Review Criteria

If and only if a positive determination is made on both of the prerequisite criteria, the BCC may then consider the variance for approval, based on the five variance review criteria:

- A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.
- B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.
- C. Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).
- D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.
- E. The variance will not cause a substantial increase in public costs.

Both sets of criteria were reviewed simultaneously. Findings for Prerequisite Criterion #1 are based on an analysis of Variance Review Criteria B and C. Findings for Prerequisite Criterion #2 are based on an analysis of Variance Review Criteria A, D, and E.

### Five Variance Review Criteria

- A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

#### Findings of Fact:

1. Eight Mile Creek Road is a county-maintained road that provides access to the proposed subdivision from Eastside Highway to Granite Creek Road. (Exhibit A, RCSR)
2. It is estimated that this subdivision will generate an additional 464 vehicular trips per day. (Morado Mountain Estates Subdivision Application)
3. The applicant is required to improve the portion of Eight Mile Creek Road leading to the subdivision to meet the county standards for new construction. (Section 5-4-5(a) and (b)(4), RCSR)
4. Eight Mile Creek Road currently has a varying travel surface width around 22 feet, 1 to 2-foot wide shoulders, and a 50-foot wide easement. The road does not meet county standards for new construction. (Morado Mountain Estates Subdivision Application)

5. The Montana Department of Transportation (MDT) is planning to reconstruct the intersection of Eastside Highway with Eight Mile Creek Road to be a roundabout in the future. The completion date is not known. (Morado Mountain Estates Subdivision Application)
6. Since MDT will be improving the intersection of Eastside Highway with Eight Mile Creek Road, the required improvements would begin approximately 500 feet north of the existing intersection (Station 5+50 on the aerial photography submitted with the road plans). (Exhibit A-23)
7. The applicant originally requested a variance from improving Eight Mile Creek Road and instead proposed to pay a pro rata share. The Road Department strongly opposed the variance request. (Exhibit A-18)
8. The applicant, the applicants of Sandhill Ridge (another proposed subdivision that accesses off Eight Mile Creek Road), the applicants' engineers, the applicants' attorneys, the Road Department, the Planning Department, and the County Attorney's Office had several meetings and substantial communication about the required improvements to Eight Mile Creek Road. (Exhibit A-23)
9. The applicant is now requesting a variance from Section 5-4-5(a) and (b)(4), which requires that Eight Mile Creek Road be reconstructed to meet the county road standards for new construction, and is instead proposing to pay the cost of materials associated with constructing the portion of Eight Mile Creek Road leading to the subdivision to meet the county standards for existing construction with the exception of easement width. To mitigate the fact that the current easement width cannot fit a pedestrian path, the applicant is proposing a 50-foot wide trail easement through the subdivision in case there is area trail planning in the future. (Morado Mountain Estates Variance Application)
10. The following improvements are needed in order for Eight Mile Creek Road to meet the county road standards for existing construction, except for easement width:
  - a) Road preparation, which would address any roadside drainage issues
  - b) A 24-foot wide pavement overlay from Station 5+50 in the preliminary road plans to the intersection with Lower Woodchuck Road
  - c) A 22-foot wide pavement overlay from the intersection with Lower Woodchuck Road to Granite Creek Road
  - d) 2-foot wide gravel shoulders on both sides over entire length
  - e) A 0.12-foot thick leveling course on the entire length
  - f) A 0.17-foot thick wearing course on the entire length
  - g) Asphalt aprons on the 49 driveway approaches along the entire length
  - h) A new box culvert installed at Station 5+50
  - i) Advance warning signs and speed advisory traffic control signs
11. The applicant submitted preliminary road plans to improve Eight Mile Creek Road to meet AASHTO standards for existing construction from Station 5+50 to Granite Creek Road. The proposed road improvements can be accomplished within the existing 50-foot wide easement. (Morado Mountain Estates Variance Application)
12. The applicant submitted four design exceptions for the horizontal curves along Eight Mile Creek Road. (Morado Mountain Estates Variance Application)
13. The Road Department granted preliminary approval of the road plans and the four design exceptions. (Exhibit A-17)
14. The cost of materials for the improvements is estimated at \$593,305.00. (Exhibit A-23)
15. David Ohnstad, Road and Bridge Department Supervisor, has agreed to provide the labor if the applicants provide the cost of materials. (Exhibit A-23)
16. The applicants of Morado Mountain Estates and Sandhill Ridge have agreed to share the cost of materials for the improvements, and request that the County provide the labor. (Exhibit A-23)
17. The applicants are also requesting that any pro rata money submitted in the same grader district between the time Morado Mountain Estates and Sandhill Ridge receive preliminary



- approval and the time the improvements to Eight Mile Creek Road are completed be reimbursed to the applicants. (Exhibit A-23)
18. The County Attorney's Office summarized discussions with the applicant. (Exhibit A-28)
  19. *To mitigate impacts on public health and safety, the applicant shall pay the cost of materials to improve the portion of Eight Mile Creek Road leading to Granite Creek Road to meet the county road standards for existing construction. (Condition 1 of Variance Approval)*
  20. *The applicant shall provide for a 50-foot wide public trail easement through the common areas, as proposed in Exhibit B. (Condition 2 of Variance Approval)*

Conclusions of Law:

1. If the applicant fulfills the requirements of Condition 1, then the County would receive the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet county standards for existing construction.
2. A 50-foot wide trail easement through the subdivision would provide the opportunity for an alternative off-road trail if the Eight Mile area is developed in the future.
3. The granting of the variance will not be substantially detrimental to public health and safety, general welfare, and adjoining properties.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

Findings of Fact:

1. Section 5-4-5(b)(4) requires that applicants of subdivisions with more than 20 units improve all roads leading to the subdivision to meet county standards for new construction. (RCSR)
2. There has been increased development activity proposed to access off Eight Mile Creek Road. (Ravalli County Planning Department)
3. Sandhill Ridge, a 35-lot major subdivision that also accesses off Eight Mile Creek Road, will be reviewed by the BCC on May 8, 2008. The requirement of Section 5-4-5(b)(4) also applies to Sandhill Ridge. (Sandhill Ridge Subdivision Application)
4. The applicants of both Morado Mountain Estates and Sandhill Ridge are proposing to pay the cost of materials to improve the portion of Eight Mile Creek Road leading to Morado Mountain Estates to meet county standards for existing construction. (Morado Mountain Estates Variance Application)
5. The Road Department stated that constructing Eight Mile Creek Road to meet county standards for existing construction is acceptable for the combined ADT that would result from Morado Mountain Estates and Sandhill Ridge for the following two reasons (Exhibit A-23):
  - a) The current condition of Eight Mile Creek Road does not require complete reconstruction
  - b) The horizontal and vertical curvature of Eight Mile Creek Road is generally level

Conclusions of Law:

1. The fact that Ravalli County has two development proposals that are required to make road improvements on the same road is a unique condition.
2. The recommendation from the Road Department that the applicant should improve the road to meet the road standards for existing construction is a unique condition.

**C. Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Findings of Fact:

1. The horizontal and vertical curvature of Eight Mile Creek Road is generally level. (Exhibit A-23)

2. The easement width for Eight Mile Creek Road is 50 feet. (Morado Mountain Estates Variance Application)

Conclusion of Law:

The challenge of purchasing additional easement to reconstruct the road to meet county standards for new construction is not a physical condition.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2193). The application complies with Resolution 2193.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined in italics below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

***Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.*

***Countywide Policy 4.1:** Encourage development that will minimize or avoid additional costs to existing taxpayers.*

***Countywide Policy 4.2:** Consider cumulative impacts of development.*

***Countywide Policy 4.4:** Improve and maintain existing infrastructure and public services.*

***Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.*

- The applicant is proposing to pay the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet county standards for existing construction. The applicant is also dedicating a 50-foot wide trail easement for future area trail planning. (Morado Mountain Estates Variance Application)
- The Road Department has granted preliminary approval of the road plans and recommends that the proposal be approved. (Exhibit A-23)
- The County Attorney's Office summarized discussions with the applicant. (Exhibit A-28)
- *To mitigate impacts on public health and safety, the applicant shall pay the cost of materials to improve the portion of Eight Mile Creek Road leading to Granite Creek Road to meet the county road standards for existing construction. The applicant shall also provide for a 50-foot wide trail easement, as proposed in Exhibit B. (Conditions 1 and 2 of Variance Approval)*

Conclusions of Law:

1. The subdivision proposal complies with applicable zoning regulation.
2. The variance will not vary from the provisions in the Growth Policy.

**E. The variance will not cause a substantial increase in public costs.**

Findings of Fact:

1. The applicant is proposing to pay the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet county standards for existing construction. (Morado Mountain Estates Variance Application)

2. The Road Department has granted preliminary approval of the road plans and recommends the proposal be approved. (Exhibit A-17)
3. The County Attorney's Office summarized discussions with the applicant. (Exhibit A-28)
4. *To mitigate impacts on public health and safety, the applicant shall pay the cost of materials to improve the portion of Eight Mile Creek Road leading to Granite Creek Road to meet the county road standards for existing construction. (Condition 1 of Variance Approval)*

Conclusion of Law:

The granting of the variance will not cause a substantial increase in public costs.

**Prerequisite Variance Criteria**

**A. Strict compliance with these regulations will result in undue hardship.**

Findings of Fact:

1. The conclusion for Criterion B is there are unique conditions associated with the variance request.
2. The conclusion for Criterion C is that there are no physical conditions preventing the applicant from acquiring the 60-foot wide easement and constructing the road to meet full county standards.

Conclusion of Law:

Strict compliance with these regulations will result in undue hardship.

**B. Compliance is not essential to the public welfare.**

Findings of Fact:

1. The conclusion for Criterion A is that granting the variance will not be substantially detrimental to public health and safety, general welfare, and adjoining properties.
2. The conclusions for Criterion D are that the variance request complies with applicable zoning regulations and does not vary from the provisions in the Growth Policy.
3. The conclusion for Criterion E is that the granting of the variance will not cause a substantial increase in public costs.

Conclusion of Law:

Compliance is not essential to the public welfare.

**C. Overall Conclusion on Hardship and Public Welfare**

The variance application provides evidence that there is an undue hardship and that compliance with the RCSR is not essential to the public welfare.